

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Emergency Broadband Connectivity)	WC Docket No. 20-445
Fund Assistance)	
)	

COMMENTS OF NCTA —THE INTERNET & TELEVISION ASSOCIATION

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NCTA – The Internet & Television Association (NCTA)¹ hereby submits these comments in response to the Wireline Competition Bureau’s Public Notice² on the implementation of the Emergency Broadband Benefit Program (EBB Program or the Program) enacted as part of the Consolidated Appropriations Act, 2021 (Act).³ NCTA strongly supports the EBB Program. Consistent with Congress’s objectives, NCTA encourages the Commission to ensure that the benefits of the Program are available to the widest array of consumers by giving all interested providers equal opportunity to participate in the Program and by minimizing administrative and implementation burdens. These steps will make the most effective use of the funds that Congress has provided for this important undertaking.

¹ NCTA is the principal trade association of the cable television industry in the United States, which is a leading provider of residential broadband service to U.S. households. Its members include owners and operators of cable television systems serving nearly 80 percent of the nation’s cable television customers, as well as more than 200 cable program networks. Cable service providers have invested more than \$290 billion over the last two decades to deploy and continually upgrade networks and other infrastructure—including building some of the nation’s largest Wi-Fi networks.

² *Wireline Competition Bureau Seeks Comments on Emergency Broadband Connectivity Fund Assistance*, Public Notice, WC Docket No. 20-445, DA 21-6 (rel. Jan. 4, 2021) (*Notice*).

³ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904 (2020).

I. INTRODUCTION AND SUMMARY

In response to the COVID-19 pandemic, NCTA members have been at the forefront of ensuring that Americans remain connected to fast and reliable broadband Internet access service. Rising to the challenge of this unprecedented crisis, the vast majority of NCTA member companies have taken the Keep Americans Connected pledge,⁴ and have enhanced their low-income programs or launched new programs to qualifying customers on a voluntary basis.⁵ Without government funding, these programs have helped ensure that low-income individuals and those most affected by the pandemic were able to access the Internet when they needed it the most. Further, even as there have been significant increases in the amount of traffic and substantial shifts in peak period traffic patterns, cable broadband networks have continued to perform at exceptional levels.⁶

Designation as an eligible telecommunications carrier (ETC) is a prerequisite to participation in the current federal Lifeline program. In enacting the EBB Program, by contrast, Congress recognized the importance of including non-ETCs so that the emergency benefit could be available to all eligible households. The Program therefore represents a unique opportunity for the Commission to extend the limited reach of the current Lifeline program, which has been underutilized and skews heavily toward wireless services,⁷ by encouraging all broadband providers to participate in this new government effort to support households in need and giving these

⁴ Federal Communications Commission, *Keep Americans Connected Pledge* (updated July 8, 2020), <https://www.fcc.gov/keep-americans-connected>.

⁵ A full listing of member company efforts is available on NCTA's website at Responding to the COVID-19 Outbreak, <https://www.ncta.com/response>.

⁶ NCTA Covid-19 Dashboard: How Cable's Internet Networks Are Performing (last updated Jan. 16, 2021), <https://www.ncta.com/COVIDdashboard>.

⁷ See *Program Data: Lifeline Participation*, USAC (last visited Jan. 16, 2021), <https://www.usac.org/lifeline/learn/program-data/> (showing estimated 2020 Lifeline participation rate of only 25 percent of eligible households nationwide); Federal-State Joint Board on Universal Service, 2020 Universal Service Monitoring Report, Table 2.5 (rel. Jan. 15, 2021), <https://docs.fcc.gov/public/attachments/DOC-369262A1.pdf>.

households more choices for subsidized connectivity during the crisis. If successful, the Program could help inform ways to reform Lifeline, including by minimizing operational burdens and thereby encouraging broader competitive options for consumers.

To provide much-needed relief to consumers struggling during the pandemic, NCTA proposes that the Commission adopt the following framework for the EBB Program.

Maximize participation and increase competition and consumer choice:

- Create a single start date for all participating providers to enroll consumers for the emergency benefit;
- Adopt an expedited approval process for non-ETCs to participate in the Program:
 - Automatic approval of an application for participation by a broadband provider with a pre-existing program should be granted immediately upon filing, with a presumption that the verification process used for that program qualifies as sufficient to avoid waste, fraud, and abuse;
 - Final determination regarding the sufficiency of a provider's verification process should be reviewed under objective standards;
 - Providers that are not eligible for automatic approval should be deemed technically and financially qualified to participate in the Program if they have offered broadband service for at least two years as reported on the Form 477.
- Require USAC to update the National Verifier and NLAD so that the databases verify all means of eligibility, other than for existing programs that have approved alternative verification processes and where the provider receives approval to verify consumers using the alternative process;
- Ensure that all participating providers are able to access the NLAD, and the National Verifier if they so choose, before consumer enrollment begins, including in a test environment before final rules are issued;
- Allow as much flexibility as possible in the election notice to USAC of standard-rate information; and
- Clarify that reliance on approved verification processes, the National Verifier, and the NLAD qualifies a provider for the good faith safe harbor from enforcement.

Give providers flexibility in determining how to make the benefit available:

- Allow the provider to identify which Internet service offerings it will make available for the benefit, and which eligibility criteria to support and verify;
- Decline to mandate any particular form of outreach;
- Clarify that the ban on early termination fees does not prevent a provider from restoring an eligible household, that upgraded to a higher tier of service with support from the Program, to the level of service the household was receiving prior

to the Program if the customer is unable or unwilling to continue paying the unsubsidized amount once the Program has ended;

- Find that the associated equipment eligible for the benefit includes any equipment supplied by the provider to enable broadband connectivity, for example, a modem or gateway; and
- Allow a participating provider to provide the benefit to households that subscribe to its pre-existing programs.

Provide transparency regarding the duration of the EBB Program:

- Limit the benefit to one per eligible household;
- Notify providers on a real-time basis how much of the Fund has been depleted; and
- Provide timely notice of the expected conclusion of the Program as far in advance as possible.

Minimize burdens associated with a short-term, temporary program:

- Avoid applying burdensome Lifeline rules or other rules to the EBB Program (apart from Lifeline minimum service standards).

II. THE COMMISSION SHOULD ADOPT AN EXPEDITED PROCESS TO APPROVE THE PARTICIPATION OF NON-ETCS AND USE OF THEIR ALTERNATIVE VERIFICATION PROCESSES, INCLUDING AUTOMATIC APPROVAL OF NON-ETCS WITH EXISTING PROGRAMS

In deciding which broadband providers may participate in the EBB Program, the Act identifies three distinct processes: (1) all interested providers must inform the Commission that they elect to participate and provide some basic information about their services;⁸ (2) the Commission must approve the participation of providers that are not already ETCs;⁹ and (3) the Commission must approve the alternative verification process used by providers that are not already Lifeline providers if the Commission determines that such process is sufficient to avoid waste, fraud, and abuse.¹⁰

⁸ § 904(a)(12)(B).

⁹ § 904(d)(2); *Notice* at 2.

¹⁰ § 904(b)(2)(B).

Maximizing provider participation in the Program, especially beyond the traditional Lifeline providers, should guide the Commission's implementation of the Program. The Commission should adopt an expedited approval process for non-ETCs and ensure the application process is clear and straightforward. For non-ETCs that were offering qualifying programs as of April 1, 2020, the approval process must be automatic as stipulated by Congress.¹¹ By adopting rules that maximize provider participation,¹² consumers benefit with more competitive options and more robust service offerings, including existing COVID-related broadband service offerings. Failure to do so, by contrast, may undermine Congress's goal of providing support for existing low-income programs and could channel the emergency broadband benefits disproportionately to consumers served by existing Lifeline providers, to the disadvantage of millions of American households that may not have access to those Lifeline providers or that prefer to apply the benefit to broadband services from cable operators and other non-ETCs. Ensuring that all consumers have equal access to the broadband benefit is consistent with the Commission's well-established goals of "preserving a level playing field"¹³ and avoiding the consumer harm associated with enshrining an incumbent's headstart.¹⁴

¹¹ § 904(d)(2)(B).

¹² See, e.g., Geoffrey Starks (@GeoffreyStarks), Twitter (Jan. 5, 2021, 3:30 PM), <https://twitter.com/GeoffreyStarks/status/1346569782544510977> ("Thank you @jspalter and @ustelecom for talking with me today about how we can maximize broadband provider participation in the @FCC Emergency Broadband Benefit. I'm calling on broadband providers across the country to get involved so that we reach every eligible American we can.").

¹³ *Satellite Broad. & Commc'ns Ass'n v. FCC*, 275 F.3d 337, 364 (4th Cir. 2001); see also *McElroy Elecs. Corp. v. FCC*, 990 F.2d 1351, 1365 (D.C. Cir. 1993) (Commission is required to treat apparently "similarly situated parties alike," unless it puts forward "an adequate justification for disparate treatment").

¹⁴ *In the Matter of an Inquiry into the Use of the Bands 825-845 MHz & 870-890 MHz for Cellular Commc'ns Sys.; Amendment of Parts 2 & 22 of the Comm'n's Rules Relative to Cellular Commc'ns Sys.*, 89 F.C.C.2d 58, 74-75 (1982). Indeed, the Commission on occasion has gone so far as to reduce the regulatory requirements on new entrants to encourage them to enter the marketplace. *In the Matter of Implementation of Section 621(a)(1) of the Cable Commc'ns Policy Act of 1984 as amended by the Cable*

A. The Commission Should Adopt an Expedited Application Process That Enables All Providers to Start in the Program at the Same Time.

The *Notice* seeks comment on the implementation of the EBB Program's eligibility and application process for participating providers.¹⁵ NCTA generally supports the Commission's proposed application process, with two revisions. First, the *Notice* proposes "to accept applications on a rolling basis" throughout the lifespan of the Program.¹⁶ NCTA encourages the Commission to create a single window for the submission of applications in order to ensure an equitable approval process for both ETCs and non-ETCs.

The Commission should also ensure that all providers start in the Program at the same time, thereby giving consumers as much choice as possible at the outset and avoiding disparities in eligibility for reimbursement under the Program. Given that the Commission proposes to limit the Program to one benefit per household,¹⁷ a single window allows consumers to select the plan and provider that best meets their needs rather than just the first offering that is approved.¹⁸ Establishing a single filing window also provides time for the Commission to update the NLAD, as required by the Act.¹⁹ It will also be more administratively efficient for USAC to start the

Television Consumer Prot. & Competition Act of 1992, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101 (2007). Here, NCTA is asking only to put ETCs and non-ETCs on equal footing regarding their participation in the Program.

¹⁵ *Notice* at 2.

¹⁶ *Id.* at 5.

¹⁷ The *Notice* proposes to use the Lifeline definition of "household." *Notice* at 6 (citing 47 C.F.R. § 54.400(h)). NCTA supports this proposal.

¹⁸ Indeed, a household is most likely to want to apply the benefit to its existing service if their provider elects to participate.

¹⁹ § 904(b)(3). The Commission should confirm that any USAC administration costs associated with this Program will be paid for by this Program, as proposed in the *Notice*, and not through universal service. *Notice* at 12-13. USAC should be required to allocate expenses and any Program expenses should be reflected in its annual report.

benefit at the same period in time. After the initial window closes, the Commission could consider any additional applications on a rolling basis.

Second, the Commission proposes to require, as part of the election notice filed with USAC, “the submission of documentation demonstrating the standard rates for services for which a provider may claim reimbursement” from the Program and seeks comment on the most efficient method for having participating providers submit their standard rate information.²⁰ The Commission should allow as much flexibility as possible in the submission of this information so as to not preclude providers from promptly applying for the benefit. For instance, the Commission could determine that the provider satisfies this requirement by submitting a short exhibit with its application listing its Internet service offerings and pricing information as of December 1, 2020.

B. The Commission Should Adopt a Streamlined Approval Process for Non-ETC Providers, Including Automatic Approval for Non-ETCs with Existing Programs.

The Act makes clear that a broadband provider that is not designated as an ETC may become a participating provider if it “meets requirements established by the Commission for participation in the [Program] and is approved by the Commission under subsection (d)(2),” which directs the Commission to establish an expedited process to approve providers.²¹ The Act further provides that the Commission “shall automatically approve” a broadband provider that has “an established program as of April 1, 2020, that is widely available and offers internet service offerings to eligible households and maintains verification processes that are sufficient to avoid fraud, waste, and abuse.”²²

²⁰ *Notice* at 3. The Commission should clarify that the benefit can be applied to any Internet service offering as long as the rate is not higher than the standard rate as of December 1, 2020.

²¹ § 904(a)(12)(A)(ii); *see* § 904(d)(2)(A).

²² *Id.* § 904(d)(2)(B).

Automatic approval, in particular, must mean something more than simply that a provider is entitled to submit an application to participate in the EBB Program. Congress’s mandate that existing low-income and COVID-19 programs be automatically approved is an express recognition that those programs should already satisfy all the implementation obligations the Commission might otherwise impose, and that any additional implementation obligations be expressly limited to ensuring that the EBB Program is not subject to waste, fraud, or abuse. Notably, the Act defines “eligible household” to include households that meet the provider’s criteria for its existing low-income or COVID-19 programs.²³ In effect, then, a provider’s existing programs would qualify as an established program for purposes of automatic approval.

Regardless of whether a non-ETC is eligible for automatic approval, the approval process should be as streamlined as possible to maximize non-ETC participation in the EBB Program. For non-ETCs that did not have established programs in place as of April 1, 2020, the Commission’s approval process should be limited to obtaining reasonable assurances that the provider is technically and financially capable of providing the broadband Internet access service offerings for which it will seek reimbursement. Evidence that the provider is currently offering broadband Internet access service and has been providing that service for at least two years based on Form 477 filings would be sufficient for approval. The Commission previously used this approach as a method for an applicant to demonstrate its operational experience and financial qualifications to participate in the Connect America Fund Phase II Auction²⁴ and Phase I of the Rural Digital Opportunity Fund Auction.²⁵

²³ § 904(a)(6)(E).

²⁴ *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice & Filing Requirements & Other Procedures for Auction 903*, Public Notice, 33 FCC Rcd 1428 (rel. Feb. 1, 2018).

²⁵ *Rural Digital Opportunity Fund Phase I Auction Scheduled for Oct. 29, 2020; Notice & Filing Requirements & Other Procedures for Auction 903*, Public Notice, 35 FCC Rcd 6077 (rel. June 11, 2020).

Given the urgent nature of the Program and the objective of facilitating participation by non-ETCs, applications that include all the required information should be deemed provisionally granted upon filing so that providers can access the NLAD and the National Verifier. The Commission should take final action on all applications and ensure access to the USAC databases prior to the Program launch date, however, so that providers are not put in the position of providing the emergency benefit without assurance of receiving reimbursement from the Program.

Finally, the Act deems ETCs as participating providers for purposes of the Program,²⁶ but the *Notice* proposes to limit this definition to areas where a provider is designated as an ETC.²⁷ The Commission should instead apply this definition to any entity that is currently designated as an ETC, and any affiliate of such entity, in all states where it wishes to provide the emergency benefit.²⁸ An entity designated as an ETC in any state has been deemed technically and financially qualified to receive government support and is familiar with the National Verifier and NLAD databases. Such an entity, or any of its affiliates, can reasonably be expected to be able to apply this expertise to the Program. The Commission should therefore provide access to the National Verifier and NLAD in all states such entity or affiliate wishes to provide the emergency benefit. To the extent the affiliate wants to use an alternative database, the Commission should follow the streamlined approval outlined above or discussed in Section II.C below.

C. The Commission Should Use Reasonable Standards for Assessing Alternative Verification Processes.

The Act allows participating providers to propose their own alternatives to the National Verifier to verify that a household is in fact eligible for the emergency benefit, and to rely on that

²⁶ § 904(a)(12)(A)(i).

²⁷ *Notice* at 5.

²⁸ Some NCTA members, for instance, are ETCs in a few of the states where they operate, but may elect to participate in the Program in areas of their footprint beyond their ETC-designated areas.

alternative process if the Commission determines that it will be sufficient to avoid waste, fraud, and abuse.²⁹ The Commission should presumptively qualify the verification processes used by providers to qualify households for their pre-existing programs.

For at least 10 months now, and in some cases far longer, providers have been enrolling eligible households in their low-income and COVID-19 programs without any government financial support. Providers who were therefore absorbing the costs of providing these programs have a strong incentive to ensure that the programs are targeted at households in the greatest need and that the households enrolling in the Program in fact meet these eligibility criteria, including:

- A child's enrollment in a qualifying school;
- Enrollment of a household member in certain government assistance programs, including National School Lunch (NSLP), Public Housing, Supplemental Nutrition Assistance Program (SNAP), Low Income Home Energy Assistance Program (LIHEAP), Women, Infants and Children (WIC), and Temporary Assistance for Needy Families (TANF);
- Cross-referencing an applicant's information with public information, including Census Bureau Census Block Group data, National Center for Education Statistics data regarding the percentage of students in a school eligible for NSLP, list of USDA Community Eligibility Provision school districts, and Department of Housing and Urban Development public housing data; and
- Data to qualify eligible customers based on a high concentration of households with an income below a certain level and/or those households that meet 130% of the poverty level.

Likewise, providers generally require documentation to confirm the identity of the subscribers using processes including proof of ID such as a driver's license, passport, social security number, or other means.

The Commission should find that these objective criteria are sufficient to avoid waste, fraud, and abuse, and that a provider may use an existing verification process that draws on such

²⁹ § 904(b)(2)(B).

criteria to qualify eligible households for the emergency benefit, including households that may not currently be eligible for a provider's existing program.³⁰ The Commission should also automatically, or at least presumptively, approve verification processes or verification processes that utilized the services of established third-party vendors, such as Solix and ID.me.³¹ By contrast, the *Notice*'s proposal that an alternative verification process must be "at least as stringent as the methods used by the National Verifier"³² is so vague as to potentially negate the use of the alternative verification methods that Congress expressly contemplated.

Finally, the Commission should prioritize updating the National Verifier to ensure that all qualifying programs, even those not eligible for Lifeline today, are included. Updating the National Verifier to include school lunch and unemployment benefits will simplify and streamline the process for participating providers that elect to use the National Verifier. Participating providers with approval to use alternative verification processes may also find that the updated National Verifier is a useful supplement or substitute for their approved alternative process. Those providers should be permitted, but not required, to use the National Verifier. To the extent this update cannot be accomplished concurrently with other pre-launch activities, however, the Commission should not hold up the Program's start date. Given the need for immediate relief

³⁰ For example, a verification process for an existing program that applies to low-income households with children should also be approved for purposes of verifying all low-income households eligible under the Program.

³¹ "Solix is the leading administrator of telecom Lifeline, financial ABLE, and healthcare related BPO programs supporting leading governmental agencies at the state and federal level throughout the U.S." Solix, <http://www.solixinc.com/about-us/>. "ID.me provides secure identity proofing, authentication, and group affiliation verification for government and businesses across sectors." ID.me, <https://www.id.me/about>. The Commission could expedite implementation of the Program by identifying a list of third-party databases as reasonable and automatically approving any provider that relies on either the National Verifier/NLAD or an approved third-party dataset.

³² *Notice* at 8.

during the COVID-19 crisis, the updating process—which could take months—should not be a reason to delay the launch of the Program.³³

D. The Commission Should Clarify the Good Faith Safe Harbor to Provide Certainty for Participating Providers.

The Act provides a safe harbor from enforcement for participating providers who rely in good faith on any of the verification methods specified in section 904(b)(2),³⁴ including alternative verification processes that have been approved by the Commission. The *Notice* seeks comment on what constitutes “good faith” reliance on the information provided through the verification process to identify eligible households.³⁵

A robust safe harbor is a critical element in encouraging provider participation in the Program. The addition of a “good faith” standard should not impose additional risks or burdens on providers who utilize methods implemented or approved by the Commission to verify eligible households for the emergency benefit. To the contrary, reliance on the Commission’s own databases and on alternative methodologies that the Commission itself has reviewed and approved should constitute “good faith” reliance *per se*.³⁶ At most, the Commission should find good faith

³³ To the extent that the Commission has not updated the National Verifier to enable verification of the eligibility for certain categories of eligible households, *e.g.*, Pell grant recipients or households that have experienced a “substantial loss of income,” a provider utilizing the National Verifier could not be expected to extend the benefit to such household. By contrast, the Commission must complete the necessary steps to enable all participating providers to query the NLAD before any participating provider can begin providing benefits under the Program in light of the *Notice*’s proposal that every participating provider must access and use the NLAD to determine whether a household requesting a benefit is already enrolled with another provider. *See Notice* at 6.

³⁴ § 904(j).

³⁵ *Notice* at 12.

³⁶ For instance, section 1692k(e) of the Consumer Credit Protection Act provides that: “No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Bureau, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.” 15 U.S.C. § 1692k(e). Justice Breyer explained the operation of this safe harbor as follows: “Faced with legal uncertainty, a lawyer can turn to the [FTC] for an advisory opinion. And once he receives that opinion and acts upon it the dilemma disappears: If he fails to follow the opinion, he has not acted in good faith

reliance if the provider was not intending to defraud the Program and had no knowledge of circumstances that should have put it on notice regarding the efficacy of the process it relied on.³⁷

This approach limits waste, fraud, and abuse by tying the safe harbor to the utilization of approved verification methods, while protecting providers acting in good faith, and thereby encourages broad provider participation.

III. THE COMMISSION SHOULD GIVE PROVIDERS MAXIMUM FLEXIBILITY IN HOW THEY MAKE THE BENEFIT AVAILABLE

Because the benefit is limited and temporary, the Commission should adopt rules that maximize the provider's flexibility in how they make the benefit available. This flexibility will enable providers to expedite participation in the EBB Program, which will accelerate the benefits for consumers. Specifically, the Commission should allow the provider to identify which Internet service offerings qualify for the emergency benefit and which categories of eligible households can receive the emergency benefit. To the extent a provider wishes to limit the benefit to subscribers eligible for its low-income or COVID-19 programs that existed on or before December

and can fairly be held liable. If he follows the opinion, the statute frees him from any such liability.” *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 605 (2010) (Breyer, J., concurring) (internal citation omitted); *see also Jackson v. Resolution GGF Oy*, 136 F.3d 1130, 1134 (7th Cir. 1998) (construing similar good faith reliance requirement in the Illinois analog to the Federal Truth in Lending Act) (“It is awfully hard to see how a business decision supported by an opinion of this court and fortified by a letter from the top lawyer at the state agency regulating the subject could be other than in ‘good faith.’ Demanding more than this record discloses on that subject would undermine the ability of the Department to offer safe harbor to persons who rely on its rules or interpretations, and so destroy the function of [the statute].”).

³⁷ *Cf.* 29 C.F.R. § 790.15(a) (defining good faith reliance under a similar safe harbor provision in the Fair Labor Standards Act as “whether the employer, in acting or omitting to act as he did, and in relying upon the regulation, order, ruling, approval, interpretation, administrative practice or enforcement policy, acted as a reasonably prudent man would have acted under the same or similar circumstances. ‘Good faith’ requires that the employer have honesty of intention and no knowledge of circumstances which ought to put him upon inquiry.”); 34 C.F.R. § 674.38(a)(3) (“[A]n institution [managing a borrower’s Perkins loan] may rely in good faith on the information it receives [from the borrower or, *inter alia*, a database maintained by an agency] unless the institution, as of the date of the determination, has information indicating that the borrower does not qualify for the deferment.”).

1, 2020, it should be permitted to do so. The Commission should also clarify that modems and routers are considered “associated equipment” and thus eligible for the emergency benefit.

A. The Commission Should Adopt Rules That Grant Participating Providers Maximum Flexibility in Participating in the Program.

Given that participation in the Program is voluntary for providers and considering the burdens and operational challenges associated with participating in a short-term program,³⁸ the Commission should allow the participating provider to determine which categories of eligible households and which of its Internet service offerings qualify for the emergency benefit. For instance, a participating provider should be permitted to limit the benefit to those households eligible to participate in the provider’s COVID-related offerings, and other existing low-income offerings, as of December 1, 2020, or that subscribe to such offerings during the period the Program is in effect. A provider should also have the option, but not the obligation, to extend the benefit to selected categories of eligible households, such as households with children who qualify under subsidized meal programs or Pell grants.

Likewise, while a provider may decide to extend the benefit to some or all of its Internet service offerings other than its existing programs, a provider should not be *required* to honor a request from an eligible household to use the benefit to upgrade to an Internet offering that is not available under its existing program. Nonetheless, if a provider does decide to offer the benefit to existing or new subscribers who qualify for an existing program but choose an offering that was in place as of December 1, 2020 that is not typically available under the existing program, the Commission should clarify that the ban on early termination fees³⁹ does not prevent a provider

³⁸ See § 904(a)(12)(B).

³⁹ The Act provides that a provider must certify that a household receiving the benefit “will not be required to pay an early termination fee if such eligible household elects to enter into a contract to receive such internet service offering if such household later terminates such contract.” § 904(b)(6)(B)(ii).

from providing the eligible household the level of service it was receiving prior to the EBB Program after it has ended if the customer does not wish to pay the full unsubsidized amount. By adopting these rules—and thus allowing the participating provider to rely on its existing programs in implementing the Program—the Commission will streamline the process for participating providers and foster broad participation in the Program, thus promoting consumer choice and helping connect low-income households as soon as possible.

The Commission also seeks comment on ways to “track the eligibility of households and prevent duplicative support.”⁴⁰ NCTA agrees that the Commission should clarify that the benefit is limited to one per eligible household to prevent duplicative support. This one-benefit-per-household requirement will similarly ensure the benefit has the broadest possible impact and will minimize waste, fraud, and abuse. To the extent the Commission plans to rely on the NLAD to implement such a requirement,⁴¹ it immediately should begin the process of providing non-ETCs with the necessary access to the database, ensure that such access exists when the window opens for applications, and offer any training providers will need to use that system. The Commission should also ensure the NLAD is updated within 24 hours, if not sooner, after a provider submits names to the NLAD.

Finally, the Commission should direct USAC to allow access to and testing of all necessary databases by non-ETCs in advance of the issuance of final rules. Familiarity with the databases and the tools for using them is a critical element of participation in the Program. All participating providers will need to utilize the NLAD, and at least some providers will rely on the National Verifier, but non-ETC providers will not have experience with these databases. A test period is

⁴⁰ *Notice* at 6.

⁴¹ *Id.*

therefore critical to ensuring that all participating providers can begin participating in the Program at the same time.

B. The Commission Should Allow the Benefit to be Applied as Broadly as Possible So as to Maximize Its Impact Without Sacrificing Quality.

NCTA agrees that the Commission should provide further clarity on which services and equipment are eligible for reimbursement under the Program.⁴² Pointedly, Congress did not limit the benefit to a particular service offering or offerings, but rather provided that the benefit could be applied to “any of” the provider’s Internet service offerings that the provider chooses to offer “in the same manner, and on the same terms” as on December 1, 2020.⁴³ The benefit should therefore be usable for any of a provider’s offerings, including prepaid offerings, in the form in which they were offered on December 1, provided they meet the Lifeline minimum service standards (MSS).

First, while NCTA generally opposes applying the Lifeline rules to the Program, the Commission should require that fixed Internet service offerings meet the Lifeline MSS⁴⁴ for fixed broadband to qualify for the benefit. The current fixed broadband MSS requires transmission speeds of 25 Mbps downstream and 3 Mbps upstream.⁴⁵

Applying an MSS backstop will avoid waste, fraud, and abuse associated with supporting substandard offerings. Doing so is consistent with the goal of the Program “to meaningfully access

⁴² *Notice* at 8.

⁴³ § 904(a)(9).

⁴⁴ 47 C.F.R. § 54.408.

⁴⁵ 47 C.F.R. § 54.408(b)(1). The mobile MSS as currently applied requires provision of 4.5GB of data per month. 47 C.F.R. § 54.408(b)(2)(ii)(A)-(C); *see also Lifeline & Link Up Reform & Modernization*, Order, 35 FCC Rcd 12958, ¶ 15 (Nov. 16, 2020) (Commission order waiving mobile MSS). The Commission should consider adding a minimum speed threshold sufficient to support meaningful participation in remote learning. *See Notice* at 9.

and participate in remote learning during the COVID-19 pandemic,”⁴⁶ and that supported devices “should be expected to support video conferencing platforms and other software essential to ensure full participation in online learning.”⁴⁷ Adopting an MSS for the Program will also help ensure that the broadband services supported by the Program will have sufficient speeds and capacity to fulfill these requirements.

Second, the benefit should be available to offset the full charge for a bundled offering that includes Internet service, up to the \$50 monthly cap on the benefit, unless the provider itself separately states the price of the broadband component on or before December 1, 2020 and that the price for service and any associated equipment totals less than \$50 per month. Because the Act specifies that the benefit covers the “standard rate,” up to \$50,⁴⁸ it should also cover ancillary charges included in the standard rate, like in-home Wi-Fi charges, up to the \$50 cap.

The emergency benefit also covers the “amount charged” to a household for “associated equipment.”⁴⁹ The Commission should clarify that the associated equipment eligible for the benefit includes any equipment supplied by the provider to enable broadband connectivity, including modems and routers, but would not include end user devices such as wireless phones, laptops, computers, or tablets that are covered under the separate \$100 benefit for a connected device.⁵⁰

⁴⁶ *Notice* at 9.

⁴⁷ *Id.* at 9.

⁴⁸ § 904(a)(7).

⁴⁹ *Id.*

⁵⁰ § 904(b)(6)(C).

C. The Commission Should Provide Transparency Regarding the Financial Status of the Program.

The Act provides that the Program will conclude when the amount appropriated to the Emergency Broadband Connectivity Fund is expended.⁵¹ Because the Fund is limited and there are potentially millions of eligible households, there could be considerable uncertainty regarding the duration of the Program. That uncertainty could discourage both providers and consumers from participating in the Program. The Commission can take several steps to reduce this uncertainty and thereby promote more robust participation and allow consumers to plan how long they will receive support.

First, the Commission should establish a process to notify providers on a regular basis how much of the Fund has been depleted so that participating providers and households can try to plan for the end of the Program.⁵² For instance, the Commission could establish a dashboard or tracker on the USAC website, that is real-time or at least updated weekly, which provides the percentage of the Fund remaining. This would allow providers to plan and track funding so that they can transition participating households.

Second, the Commission should provide timely notice of the expected conclusion of the Program as far in advance as possible—no less than 30 days in advance—so that providers can notify participating households and give them sufficient time to request any adjustments in their service that may be necessitated by the termination of the emergency benefit.

Finally, the *Notice* also seeks comment on how the Commission should administer the conclusion of the Program.⁵³ Once the Program ends, the participating providers generally should

⁵¹ § 904(i)(2).

⁵² *Notice* at 13 (seeks comment on how the Commission should share information about disbursements made from the Emergency Broadband Connectivity Fund and at what intervals).

⁵³ *Notice* at 13.

be permitted to move an eligible household to the level of service it was receiving prior to the Program unless the customer requests a different option. This will ensure that while the consumer may opt-in to a particular level of service after the benefit expires, it is not automatically continued on a level of service it would not choose without the subsidy, thereby maintaining consumer choice.

IV. THE COMMISSION SHOULD MINIMIZE BURDENS ON ELIGIBLE HOUSEHOLDS TO PARTICIPATE IN THE PROGRAM

In addition to maximizing provider participation, minimizing the burdens on eligible households should also guide the Commission's implementation of the Program. In this regard, the Commission should allow a participating provider to provide the benefit to households that are currently enrolled or subsequently enroll in its COVID-related or low-income programs, provided those households meet the statutory eligibility standards.⁵⁴ Because the Act itself expressly makes households eligible for the Program if they qualify for a participating provider's existing low-income or COVID-19 program, subject to verification of such household's eligibility under one of the methods authorized under the Act, existing customers would not need to provide additional documentation to the provider to participate in the Program.⁵⁵

⁵⁴ To prevent duplicative support, the *Notice* proposes that providers enroll participating households in the NLAD. *Id.* at 6. The Commission should clarify that adding the enrolled households to the NLAD does not violate federal or state privacy laws. For instance, the NLAD is "part of the FCC's Lifeline program systems of record . . . and the data is protected under the Privacy Act." *Privacy Policies*, USAC (last visited Jan. 25, 2021), <https://www.lifelinesupport.org/privacy-policies/>; *see also* Privacy Act of 1974, 5 U.S.C. § 552a (prohibiting disclosure of information about an individual contained in a system of records maintained by the federal government without their consent). To the extent the Commission authorizes alternatives to the NLAD for this purpose, it should likewise clarify that adding households to such alternative database(s) does not violate any federal or state privacy laws.

⁵⁵ § 904(a)(6)(E).

NCTA agrees that consumers will be aided by an effective outreach program to make them aware of the Program.⁵⁶ NCTA's members are experienced in getting the word out to consumers regarding their low-income and COVID-19 programs. For example, NCTA's member companies have engaged in significant efforts to publicize their own COVID-related and low-income programs, including by creating program-dedicated websites, hosting and attending community events, and various written outreach methods, such as direct mailings and emails, letters to schools, and social media posts.

Building general awareness of the Program will also require active engagement by other stakeholders and civil society groups that work with financially disadvantaged consumers. In addition, involvement of the Commission itself will be critical to a successful outreach program. The Commission has vast experience with national public awareness campaigns,⁵⁷ and unique access and credibility with national news media to publicize its efforts.

V. THE COMMISSION SHOULD TAILOR THE LIFELINE RULES TO REFLECT THE TEMPORARY NATURE OF THE PROGRAM

The Commission should proceed cautiously in applying Lifeline regulations to the Program.⁵⁸ Most NCTA members do not participate in Lifeline in part due to the burdens and liability that flow from Lifeline. If the Commission imposes the Lifeline rules on this temporary Program, it will discourage provider participation and could result in simply allowing Lifeline providers to get an additional benefit. While the Commission needs basic protections to guard

⁵⁶ See Notice at 10-11.

⁵⁷ FCC Announces Extensive Nationwide Initiative for DTV Outreach (Press Release, Aug. 18, 2008), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284629A1.pdf; FCC Continues DTV Outreach Across the Nation (Press Release, June 15, 2009), <https://docs.fcc.gov/public/attachments/DOC-291400A1.pdf>; *Expanding the Econ. & Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 591 (June 2, 2014) (directing Bureaus to “develop a comprehensive consumer outreach plan to enhance consumer awareness regarding the [post-auction] transition”).

⁵⁸ Notice at 12.

against waste, fraud, and abuse, it should not create a Program that is so burdensome that it frustrates Congress's intent of non-ETC participation.

While, as noted above, NCTA supports applying the Lifeline minimum service standards to the Program, many of the reporting and certification requirements in Part 54 are unnecessary and unduly burdensome. For example, providers should not be required to submit Form 481 (Annual Reporting Data Collection) or Form 555 (Annual Lifeline Eligible Telecommunications Carrier Certification Form), which include such matters as outage reporting that are inapposite for a short-term program. The Commission should instead adopt a streamlined process that follows the statutory certification requirements.

Further, while the Commission proposes to adopt same or similar audit procedures currently used for Lifeline providers,⁵⁹ those procedures are designed to track ETC compliance with long-term universal service programs and do not make sense in the context of a short-term program. For example, annual financial statements, company organization charts, and internal written policies should not be included as part of any Program audit. Instead, the Commission should limit the scope and clarify that any audit would include a representative sample and not based on the size or revenue of the provider. Similarly, the audit should be flexible and targeted to align with any Commission approved alternative verification processes. Any findings of alleged audit violations should be conveyed to the provider in full in writing, and the provider should be given the opportunity to respond before a final decision is reached.

Finally, the Commission seeks comment on whether it should apply other rules to the Program. In particular, the Commission asks whether the participating provider should be required to measure data usage to ensure the benefit is actually being used for subscribers who do not pay

⁵⁹ *Notice* at 11.

an end-user fee for their supported service.⁶⁰ Given the short-term nature of the Program, NCTA believes that it is unnecessary to apply this requirement. Most, if not all, households seeking or accepting the benefit will do so in order to obtain assistance in paying for broadband services that they are relying on for remote learning, teleworking, and other critical connectivity needs during the pandemic. Given the essential nature of broadband for these households, it is highly unlikely that they would seek or accept the benefit without planning to continue to use their broadband service.

VI. CONCLUSION

NCTA strongly supports the Commission's efforts to implement the Program. Adopting the rules outlined above will enable the Commission to capitalize on the efforts broadband providers have already made to ensure Americans remain connected during this unprecedented national emergency and ensure that this short-term and limited benefit has the broadest impact possible.

Respectfully submitted,

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⁶⁰ Notice at 13.